

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

MARSHALL HANKS,

*Plaintiff,*

v.

VALARITY, LLC,

*Defendant.*

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Case No. 4:14-cv-01433-JAR

**DEFENDANT VALARITY, LLC'S MOTION TO  
DISMISS PLAINTIFF'S COMPLAINT**

COMES NOW Defendant, Valarity, LLC, through its undersigned attorneys, and pursuant to Fed. R. Civ. P. 12(b)(6), moves this Court to dismiss Plaintiff's Petition. In support of its Motion to Dismiss, Defendant states as follows:

1. On August 18, 2014, Plaintiff filed a four-count Complaint arising out of Defendant's attempts to collect a debt owed by Plaintiff.

2. Count I of Plaintiff's Complaint alleges Defendant violated the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692c(a)(1), by calling Plaintiff at a time or place known to be inconvenient for Plaintiff.

3. Count I of Plaintiff's Complaint fails to state a claim upon which relief can be granted in that the Complaint fails to allege sufficient facts to show Defendant's calls were made at a time or place that was inconvenient for Plaintiff.

4. Count II of Plaintiff's Complaint alleges Defendant violated the FDCPA, 15 U.S.C. § 1692c(a)(2), by communicating with Plaintiff even though Defendant knew Plaintiff was represented by an attorney with respect to the debt.

5. Count II of Plaintiff's Complaint fails to state a claim upon which relief can be granted in that the Complaint fails to allege that Defendant called Plaintiff after it had actual knowledge he was represented by an attorney.

6. Count III of Plaintiff's Complaint alleges Defendant violated the FDCPA, 15 U.S.C. § 1692d, by engaging in conduct the natural consequence of which is to harass, oppress or abuse Plaintiff in connection with the collection of the debt.

7. Count III of Plaintiff's Complaint fails to state a claim upon which relief can be granted in that the Complaint fails to allege sufficient facts to show Defendant's conduct was harassing, oppressive or abusive.

8. Count IV of Plaintiff's Complaint alleges Defendant violated the FDCPA, 15 U.S.C. § 1692f, by using unfair or unconscionable means to collect a debt.

9. Count IV of Plaintiff's Complaint fails to state a claim upon which relief can be granted in that the Complaint fails to allege sufficient facts to show Defendant's conduct was unfair or unconscionable.

WHEREFORE, Defendant Valarity, LLC respectfully requests this Court dismiss Plaintiff's Complaint with prejudice, and for other relief as this Court deems just and proper.

Respectfully submitted,

THE LOWENBAUM PARTNERSHIP, LLC

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**CERTIFICATE OF SERVICE**

I hereby certify that I have on this 11th day of September, 2014, served a true and correct copy of the foregoing via the United States District Court for the Eastern District of Missouri's CM/ECF electronic filing system upon the following counsel of record:

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/s/ Matthew J. Aplington